

### **REMARKS**

This amendment responds to the Office Action mailed on November 19, 2008.

The applicant has canceled previously-withdrawn claims 46-96.

The Examiner objected to claim 23, suggesting that the term "a receiver" in line 10 be replaced by "said receiver." This amendment has been made.

The Examiner rejected claims 23-34 and 38 under 35 U.S.C. § 112, second paragraph as a being indefinite. The Examiner indicates that the limitation of "a second plurality of packets of said data comprising a plurality of said first plurality of packets" contradicted the later limitation that the second plurality of packets be smaller than the first plurality of packets. As intended, and the only way to read these two limitations together, is that the second plurality of packets includes more than one of the individual packets included in the first plurality. For clarification, the applicant has amended claim 23 to recite "a second plurality of packets of said data comprising a subset of said first plurality of packets." In view of this clarification, the applicant respectfully requests that the rejection of claims 23-34 and 38 under 35 U.S.C. § 112 be withdrawn.

The Examiner rejected claims 23, 24, 26, 34, 36, and 38 under 35 U.S.C. § 103(a) as being unpatentable over Sugar et al., U.S. Patent Publication No. 2007/0263657 in view of Fillebrown et al., U.S. Patent Application Pub. No. 2004/0204041. Independent claim 23 recites the limitations of "defining a first average rate to transmit a first plurality of packets of said data for presentation at a receiver" and "defining a second average rate to transmit a second plurality of packets of said data comprising a subset of said first plurality of packets, wherein said second plurality of packets is less than said first plurality of packets, wherein said second average rate is greater than said first average

rate.” The Examiner contends that sugar discloses defining two different rates to transmit first and second pluralities of packets, respectively. Sugar, however, discloses that these different rates each apply to transmissions of separate data streams, for different users. Therefore Sugar does not disclose defining two different transmission rates for the claimed first plurality and second plurality of packets, respectively, because as claimed, the second plurality of packets has to be included in the first plurality of packets. This is not the case in the cited primary reference, Sugar.

Claims 24, 26, and 34 each depend from independent claim 23, therefore these claims are patentably distinguished over Sugar for the same reasons as is claim 23.

The Examiner’s rejection appears to reject claim 35, but mis-identifying it as claim 34 (See Office Action at p. 5). Claim 35, however, is distinguished over the cited combination of Sugar and Fillebrown for the same reason as is claim 23, i.e. Sugar only associates a transmission stream with a single rate. Though the rate of one stream (a fast user) may differ from another stream (a slow user), Sugar does not disclose defining different rates for data transmitted in a single data stream as claimed. Therefore, each of claims 35 and 38 (which depends from claim 35) are also distinguished over the cited prior art.

For each of the foregoing reasons, the applicant respectfully requests that the Examiner’s rejection of claims 23, 24, 26, 34, 35 and 38 under 35 U.S.C. § 103(a) as being unpatentable over Sugar et al. in view of Fillebrown be withdrawn.

The Examiner rejected the remaining claims under 35 U.S.C. § 103(a) as being unpatentable over respective combinations, each involving Sugar and Fillebrown as the primary and secondary references, respectively. Each of these rejected claims depends


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from a respective one of claims 23 and 35, and the Examiner's rejections are each premised on the assumption that these two references disclose all the limitations of claims 23 and 35 respectively. As noted earlier, this is not the case. The applicant therefore respectfully requests that the remaining rejections be withdrawn.

In view of the foregoing amendments and remarks, the applicant requests reconsideration and allowance of claims 23-45.

Respectfully submitted

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